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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re H.N., a Person Coming Under the
Juvenile Court Law.

B208055

THE PEOPLE,

(Los Angeles County
Super. Ct. No. PJ41131)

Plaintiff and Respondent,

v.

H.N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Fred J. Fujioka, Judge. Affirmed.

Leslie G. McMurray, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,
Keith H. Borjon and Sharlene A. Honnaka, Deputy Attorneys General, for Plaintiff
and Respondent.

H.N. appeals from an order of wardship (Welf. & Inst. Code, § 602) following a finding that she committed a battery, a misdemeanor (Pen. Code, § 242). She was placed home on probation in the home of her parents with a maximum period of confinement set at one year. Thereafter, her home on probation status was revoked and she was placed in a camp-community placement program with a maximum period of confinement set at six months.¹ She contends there was insufficient evidence to support the finding she committed a battery and that the court erred in setting a maximum period of confinement. For reasons stated in the opinion, we affirm the order.

FACTUAL AND PROCEDURAL HISTORY

On June 11, 2007, at approximately 10:00 p.m., H.N., who was 16 years old, returned to her home in Newhall after being away for two days without permission. She rang the doorbell and when her father, D.N., asked who was there, appellant said, “Open the door,” or something to that effect. When D.N. opened the door, he asked her for her purse to make sure she was not bringing home an illegal substance. Appellant refused to give her father her purse, and he snatched it from her. Appellant then took the purse back. There was a scuffle and appellant hit D.N. in the eye. He “had a black eye after everything was done.”² D.N. admitted his anger was an ongoing problem between himself and appellant.

A.N., appellant’s mother, testified appellant was at the front door for a long time before she was allowed to enter. Appellant was banging and kicking the door.

¹ On September 11, 2008, the appellate record was augmented to include the minute order of July 24, 2008, reflecting the custody of the minor was taken from her parents, that she was placed in the camp-community placement program, and that a maximum period of confinement was set not to exceed six months.

² At first, D.N. testified without an interpreter and he testified he could not remember the details of how he got the black eye. After the appointment of an interpreter, D.N. testified appellant hit him and that was how he got the black eye. D.N. stated he could now recall “[b]ecause now I have an interpreter so I have a moment to recollect my memory.”

A.N. thought appellant was drunk and was angry because she was being refused entry into the house. A.N. did not see appellant punch D.N. She saw them struggling and heard punching but did not see who was hitting whom. D.N. tried to stop appellant from punching him. When D.N. said appellant had hurt his eye, A.N. looked at D.N.'s eye and realized he had been punched. No one else was involved in the incident between appellant and D.N.

Appellant testified that after she had grabbed her purse back from her father, he pushed her and she fell off the front step. D.N. punched her first and she punched him back.

On redirect, D.N. testified he clearly remembered that he did not punch appellant. Before she punched him, he pushed her and told her she was not coming in the house until he searched her purse.

Prior to sustaining the petition, the court stated in pertinent part “[T]he one thing that’s clear is that the father was hit. Everybody is clear on that. Father says he got hit. [Appellant] says she hit him. It’s also clear the result was he had a black eye. Although the father at the beginning was somewhat equivocal about whether or not she hit him, he was a lot more positive after he started using the interpreter, and there was enough testimony at the end of his testimony, after the People went over it again, to make [the court] believe it could be that he was hit. After she said she hit him, there’s no doubt in [the court’s] mind at all. We start with the fact that he got hit and he had a black eye that night. [¶] The real issue is whether or not . . . she was acting in lawful self-defense when she hit him in the eye. . . . It’s [the court’s] view, it actually began when the minor was kicking at the door and yelling. The parents who, at that time believed she was inebriated—and it is my view she probably was either drunk off one beer or a lot more than one beer, but I believe she was inebriated and that caused her to bang on the door and scream and shout and kick. . . . It’s my view she initiated the confrontation that later occurred. The parents opened the door and then advised her that she can’t come in the house unless they check her purse to see if there’s any contraband . . . in her purse. [The court believes] that was a lawful act by the parent and that the touching at that point was

both reasonable, lawful and legal. Technically, it was a battery if you pull a purse away from someone, but I don't believe that that was an unlawful touching. [¶] At that point the father pulled the purse away in order to search the purse to see if she had any contraband. When the minor insisted on coming in the house, whether he was allowed to search the purse [or] not, whether he wanted her to come in the house or not, in her current state she was bound and determined to come in. At that point I believe the force that the father used was lawful, that is, he pushed her out of the house. [¶] Now, we get to the part where the minor says that the father punched her in the face. If I believed that is true, then the minor would have acted in lawful self-defense in punching the father back. I'm going to look the minor in the eye and tell the minor I don't believe it happened that way. The father is a large enough man so, if he punches the minor, who is a lot smaller than him, in the face with a closed fist hard enough to give her head pain for a time afterwards, there would have been a mark on her face. That's what happens when you hit somebody with a closed fist. The father is big enough where he would have hurt her badly. What the minor said, it sounded so thought through, the fact she said it in a real positive manner doesn't impress me at all. [¶] [Defense counsel], I don't believe she was coached at all, not even for a second, because you've appeared in front of me for more than a year, and I don't think you coach witnesses. No, I don't. But I also think that the minor is smart enough to figure out for herself that, if she acts in self-defense, it's a defense. [¶] I want to make that clear. It's real important that you understand that. But I also want to make it clear that I don't believe her. I believe she's out of control, and I believe she's willful, and I believe she punched her father in the eye and gave him a black eye, and it was not justifiable or justified when she did that. . . .”

DISCUSSION

I

Appellant contends there was insufficient evidence to support the finding she committed a battery. ““The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]’ [Citation.] In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court

‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]’ [Citations.]” (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.)

“This standard applies to cases based on circumstantial evidence. [Citation.] The testimony of just one witness is enough to sustain a conviction, so long as that testimony is not inherently incredible. [Citation.] The trier of fact determines the credibility of witnesses, weighs the evidence, and resolves factual conflicts. We cannot reject the testimony of a witness that the trier of fact chooses to believe unless the testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions. As part of its task, the trier of fact may believe and accept as true only part of a witness’s testimony and disregard the rest. On appeal, we must accept that part of the testimony which supports the judgment. [Citation.]” (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

Here, it was undisputed that appellant punched her father causing him to have a black eye. The trial court specifically found appellant’s testimony that her father had hit her first was not believable. Moreover, while self-defense is a defense to battery, the appropriateness of conduct used to defend oneself varies depending on the circumstances. (See Pen. Code, § 693.) Here, substantial evidence supports the court’s finding that appellant’s conduct in punching her father in the eye was not justifiable conduct under the circumstances and constituted a battery. While reasonable force may be used to resist a battery, appellant’s punch unreasonably escalated the amount of force used in reaction to the pushing and shoving that was occurring. (See *People v. Myers* (1998) 61 Cal.App.4th 328, 330.)

II

Appellant contends the juvenile court erred in setting a maximum term of confinement of one year rather than six months and further erred in setting a maximum term of confinement since appellant had been placed home on probation. (See *In re Ali A.* (2006) 139 Cal.App.4th 569.) Although appellant is correct with regard to the court's initial order, the subsequent disposition order made on July 24, 2008, removed appellant from the custody of her parents and properly set a maximum period of confinement at six months. There is no error to correct.

DISPOSITION

The order of wardship is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.